

FILED

14 MAY -7 PM 2:17

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

WVG

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TERRANCE ALLAN VANN, an
Individual, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

v.

MESSAGE ENVY FRANCHISING,
LLC, an Arizona Limited Liability
Corporation; CHARIS GROUP,
LLC, an Arizona Limited Liability
Corporation; OC ENVY GROUP,
INC., a California Corporation; and
DOES 1-100, Inclusive,

Defendants.

CASE NO. 13CV2221 BEN (WVG)

CLASS ACTION

PROTECTIVE ORDER

Hon. William V. Gallo
U.S. Magistrate Judge

Complaint filed: August 12, 2013
Trial Date: None Set

1 Plaintiff Terrance Allan Vann and Defendants Massage Envy Franchising,
2 LLC ("MEF") and Charis Group LLC ("Charis") (MEF and Charis are collectively
3 referred to herein as "Defendants") (Plaintiff and Defendants are collectively
4 referred to herein as the "parties") hereby stipulate and agree to be bound by the
5 terms of a Protective Order ("Order") with regard to certain documents, electronic
6 data, and information being sought through discovery in this action ("Materials").

7 The Materials to be exchanged throughout the course of the litigation
8 between the parties may contain trade secret, proprietary or other confidential
9 information, such as that containing personal information, research, technical, cost,
10 price, marketing, or other sensitive commercial information as is contemplated by
11 Federal Rule of Civil Procedure 26(c). The purpose of this Order is to protect the
12 confidentiality of such Materials without hindering the litigation as much as
13 practically possible.

14 THEREFORE:

15 **DEFINITIONS**

16 1. The term "Confidential Information" will mean and include
17 information disclosed or to be disclosed during this litigation including, without
18 limitation, information contained in any Materials and information provided in
19 documents, portions of documents, answers to interrogatories, responses to requests
20 for admissions, trial testimony, deposition testimony, and transcripts of trial
21 testimony and depositions, including data, summaries, compilations, copies,
22 abstracts, and any other format reproducing or capturing such information or
23 otherwise derived from such information that meets the designation requirements of
24 "CONFIDENTIAL" or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY."

25 2. The term "Materials" will include, but is not limited to: documents;
26 correspondence; emails; memoranda; bulletins; member lists or other matter that
27 identify members, guests or potential members or guests; lists or other matter
28

1 identifying members, guests or employees of Charis, MEF or MEF's franchisees or
2 otherwise including private information about members, guests, employees or other
3 individuals; price lists or schedules or other matter identifying pricing; minutes;
4 letters; statements; contracts; invoices; drafts; books of account; worksheets; notes
5 of conversations; desk diaries; appointment books; expense accounts; recordings;
6 photographs; motion pictures; compilations from which information can be
7 obtained and translated into reasonably usable form through detection devices;
8 notes; reports; instructions; disclosures; other writings; and other physical objects.

9 3. The term "Counsel" will include Counsel of Record, as defined below,
10 and shall also include other attorneys, paralegals, secretaries, and other support staff
11 employed by the law firms of Sacks, Ricketts & Case, LLP; Andrews, Lagasse,
12 Branch & Bell LLP; Zeldes Haeggquist & Eck, LLP; and Cohelan Khoury &
13 Singer. For purposes of this Order, the term "Counsel" shall also include the in-
14 house attorneys and legal support staff for Defendants.

15 4. The term "Counsel of Record" will mean (i) outside counsel who
16 appear in the action in any capacity, whether on the pleadings, on the record in a
17 deposition or in a hearing, or in any other circumstance associated with the action,
18 as counsel for a party, (ii) partners, principals, counsel, associates, employees, and
19 contract attorneys of such outside counsel to whom it is reasonably necessary to
20 disclose the Confidential Information for this action, including supporting
21 personnel employed by the attorneys, such as paralegals, legal secretaries, and legal
22 clerks, and/or (iii) independent shorthand reporters retained to record and transcribe
23 testimony in this case and videographers retained to film testimony in this action.
24 For purposes of this Order, the term "Counsel of Record" shall also include the in-
25 house attorneys and legal support staff for Defendants.

26 5. The term "Independent Expert" will mean a person with specialized
27 knowledge or experience in a matter pertinent to the case who has been retained by

1 Counsel to serve as an expert witness or as a litigation consultant in this case, and
2 who is not a current employee of a party or of a competitor of a party and who, at
3 the time of retention, is not anticipated to become an employee of, or a non-
4 litigation consultant of, a party or competitor of a party.

5 **GENERAL RULES**

6 6. Each party to this litigation that produces or discloses any Confidential
7 Information and/or Materials, or any other information or Materials that the
8 producing party believes should be subject to this Order, may designate the same as
9 "CONFIDENTIAL" or "CONFIDENTIAL - OUTSIDE COUNSEL ONLY."

10 (a) Designation as "CONFIDENTIAL": Any party may use the
11 "CONFIDENTIAL" designation only if, in the good faith belief of such party and
12 its Counsel, the unrestricted disclosure of such information and/or Materials could
13 be potentially prejudicial to the business or operations of such party or invasive of
14 the privacy interests of individuals.

15 (b) Designation as "CONFIDENTIAL – OUTSIDE COUNSEL
16 ONLY": Any party may use the "CONFIDENTIAL – OUTSIDE COUNSEL
17 ONLY" designation only if, in the good faith belief of such party and its Counsel,
18 such information and/or Materials are among that considered to be most sensitive
19 by the party, including but not limited to trade secret or other confidential research,
20 development, financial, technical, proprietary or other highly sensitive commercial
21 or business information and/or Materials or information subject to a legally
22 protected right of privacy.

23 7. In the event the producing party elects to produce Materials for initial
24 inspection, no marking need be made by the producing party in advance of the
25 initial inspection. For purposes of the initial inspection, all Materials produced will
26 be considered as "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," and must be
27 treated as such pursuant to the terms of this Order. Thereafter, upon selection of

1 specified Materials for copying by the inspecting party, and at the time of the
2 production, the producing party must mark the copies of those Materials that
3 contain Confidential Information with the appropriate "CONFIDENTIAL" or
4 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY" designation.

5 8. Whenever a deposition taken on behalf of any party involves a
6 disclosure of Confidential Information of any party:

7 (a) The deposition or portions of the deposition must be designated
8 as containing Confidential Information subject to the provisions of this Order; such
9 designation must be made on the record whenever possible, but a party may
10 designate portions of depositions as containing Confidential Information after
11 transcription of the proceedings; a party will have until fourteen (14) days after
12 receipt of the final deposition transcript to inform the other party or parties to the
13 action of the portions of the transcript to be designated "CONFIDENTIAL" or
14 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY."

15 (b) The disclosing party will have the right to exclude from
16 attendance at the deposition, only during such time as "CONFIDENTIAL" or
17 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY" designated Confidential
18 Information is to be disclosed, any person, other than the deponent and other than
19 those individuals permitted access under this Order, the court reporter, and the
20 person(s) agreed upon pursuant to paragraph 12 below; and

21 (c) The originals of the deposition transcripts and all copies of the
22 deposition must bear the legend "CONFIDENTIAL" or "CONFIDENTIAL –
23 OUTSIDE COUNSEL ONLY," as appropriate, and the original or any copy
24 ultimately presented to a court for filing must not be filed unless it can be
25 accomplished under seal, identified as being subject to this Order, and protected
26 from being opened except by order of this Court.

1 9. Except as otherwise provided in this Order, all Confidential
2 Information designated as "CONFIDENTIAL" or "CONFIDENTIAL – OUTSIDE
3 COUNSEL ONLY" must not be disclosed by the receiving party to anyone other
4 than those persons permitted access within this Order and must be handled in the
5 manner set forth below and, in any event, must not be used for any purpose other
6 than in connection with this litigation, unless and until such designation is removed
7 either by agreement of the parties or by order of the Court.

8 10. Except as otherwise provided in this Order, all Confidential
9 Information designated "CONFIDENTIAL – OUTSIDE COUNSEL ONLY" may
10 be viewed only by Counsel of Record (as defined in paragraph 4) of the receiving
11 party and by Independent Experts (as defined in paragraph 5). The right of any
12 Independent Expert to receive any Confidential Information will be subject to the
13 advance approval of such expert by the producing party or as approved by the
14 Court. The party seeking approval of an Independent Expert must provide written
15 notice to Counsel of Record for the producing party, which notice will include:
16 (a) the individual's name and business title; (b) the individual's business address
17 and country of residence; (c) the individual's curriculum vitae; (d) the individual's
18 area(s) of expertise; and (e) an executed copy of the form attached hereto as Exhibit
19 A, in advance of providing any Confidential Information of the producing party to
20 the Independent Expert. Any objection by the producing party to an Independent
21 Expert receiving Confidential Information must be made in writing within fourteen
22 (14) calendar days following receipt of the identification of the proposed
23 Independent Expert. Confidential Information may be disclosed to an Independent
24 Expert if the fourteen (14) calendar day period has passed and no objection has
25 been made. The approval of Independent Experts must not be unreasonably
26 withheld.

1 11. All Confidential Information designated "CONFIDENTIAL" may be
2 viewed only by Counsel (as defined in paragraph 3) of the receiving party, by
3 Independent Experts, and by the additional individuals listed below, provided each
4 such individual has read this Order in advance of disclosure and has agreed in
5 writing to be bound by its terms:

6 (a) Party executives who are required to participate in policy
7 decisions with reference to this action;

8 (b) Technical personnel of the parties with whom Counsel of
9 Record for the parties find it necessary to consult, in the discretion of such Counsel,
10 in connection with this action and in preparation for trial of this action; and

11 (c) Stenographic and clerical employees associated with the
12 individuals identified above.

13 12. In addition to the individuals referenced in Paragraphs 10 and 11
14 above, all Confidential Information designated "CONFIDENTIAL" or
15 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY" may also be reviewed by
16 independent legal translators retained to translate in connection with this action;
17 independent copying, scanning, technical support, and electronic document
18 processing services retained by the parties or their Counsel in connection with this
19 action; graphics, translation, or design services retained by the parties or their
20 Counsel for purposes of preparing demonstrative or other exhibits for deposition,
21 trial, or otherwise in connection with this action; and non-technical jury or trial
22 consulting services retained by the parties or their Counsel in connection with this
23 action, including any mock jurors; provided, however, that any such individual has
24 read this Order in advance of disclosure and has executed a copy of the form
25 attached hereto as Exhibit A in advance of access.

26 13. With respect to all Confidential Information designated
27 "CONFIDENTIAL" or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," any

1 person indicated on the face of the document to be its originator, author, or a
2 recipient of a copy of the document, may be shown the same.

3 14. All Confidential Information which has been designated as
4 "CONFIDENTIAL" or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY" by the
5 producing or disclosing party, and any and all reproductions of that information
6 and/or Material, must be retained in the custody of the Counsel of Record for the
7 receiving party, except that Independent Experts authorized to view such
8 information under the terms of this Order may retain custody of copies such as are
9 necessary for their participation in this litigation.

10 15. Before any Materials such as those produced in discovery, answers to
11 interrogatories, responses to requests for admissions, deposition transcripts, or other
12 documents which are designated as "CONFIDENTIAL" or "CONFIDENTIAL –
13 OUTSIDE COUNSEL ONLY," are filed with the Court for any purpose, the party
14 seeking to file such Material must seek permission of the Court to file the Material
15 under seal. Any request to file such Material under seal must comply with Civil
16 Local Rule 79.2.

17 16. No document shall be filed under seal unless counsel secures a court
18 order allowing the filing of a document under seal. An application to file a
19 document under seal shall be served on opposing counsel, and on the person or
20 entity that has custody and control of the document, if different from opposing
21 counsel. If opposing counsel, or the person or entity who has custody and control
22 of the document, wishes to oppose the application, he/she must contact the
23 chambers of the judge who will rule on the application, to notify the judge's staff
24 that an opposition to the application will be filed. If an application to file a
25 document under seal is granted by Judge Gallo, a redacted version of the document
26 shall be e-filed. A courtesy copy of the unredacted document shall be delivered to
27 Judge Gallo's chambers.

1 17. At any stage of these proceedings, any party may object to the
2 “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE COUNSEL ONLY”
3 designation of any Confidential Information. The party objecting to any such
4 designation must notify Counsel for the designating party, in writing, of the
5 objected-to designation of such Confidential Information and the grounds for the
6 objection. If the dispute is not resolved consensually between the parties within
7 seven (7) days of receipt of such a notice of objections, the objecting party may
8 move the Court for a ruling on the objection. The Confidential Information at issue
9 must be treated according to the designation of the designating party until the Court
10 has ruled on the objection or the matter has been otherwise resolved. However, the
11 procedures in Judge Gallo’s April 29, 2014 Order Regarding Discovery shall
12 control as to discovery matters covered by that Order.

13 18. All Confidential Information must be held in confidence by those
14 authorized by this Order to inspect or receive it and must be used only for purposes
15 of this action. Counsel of Record for each party, and each person receiving
16 Confidential Information, must take reasonable precautions to prevent the
17 unauthorized or inadvertent disclosure of such Confidential Information. If
18 Confidential Information is disclosed to any person other than a person authorized
19 by this Order, the party responsible for the unauthorized disclosure must
20 immediately bring all pertinent facts relating to the unauthorized disclosure to the
21 attention of the other parties and, without prejudice to any rights and remedies of
22 the other parties, make every effort to prevent further disclosure by the party and by
23 the person(s) receiving the unauthorized disclosure.

24 19. No party will be responsible to another party for disclosure of
25 Confidential Information under this Order if the Confidential Information in
26 question is not labeled or otherwise designated in accordance with this Order.
27

1 20. If a party, through inadvertence, produces any Confidential
2 Information without labeling or marking or otherwise designating it as such in
3 accordance with this Order, the designating party may give written notice to the
4 receiving party that the document or thing produced is to be designated, as
5 appropriate, "CONFIDENTIAL" or "CONFIDENTIAL – OUTSIDE COUNSEL
6 ONLY," and that the document or thing produced should be treated as such in
7 accordance with that designation under this Order. The receiving party must treat
8 such designated Confidential Information in accordance with this Order, once the
9 designating party so notifies the receiving party. If the receiving party has
10 disclosed such Confidential Information before receiving the designation, the
11 receiving party must notify the designating party in writing of each such disclosure,
12 and the receiving party will make every effort to prevent further disclosure by the
13 party and by the person(s) receiving such inadvertently produced Confidential
14 Information. Counsel of Record for the parties will agree on a mutually acceptable
15 manner of labeling or marking the inadvertently produced Confidential Information
16 as "CONFIDENTIAL" or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY."

17 21. Nothing within this Order will prejudice the right of any party to
18 object to the production of any discovery on the grounds that such Confidential
19 Information is protected as privileged or as attorney work product.

20 22. Nothing in this Order will bar Counsel from rendering advice to their
21 clients with respect to this litigation and, in the course thereof, relying upon any
22 Confidential Information designated as "CONFIDENTIAL" or "CONFIDENTIAL
23 – OUTSIDE COUNSEL ONLY," provided that the contents of the Confidential
24 Information must not be disclosed to those not authorized by this Order.

25 23. This Order will be without prejudice to the right of any party to oppose
26 production of any Confidential Information for lack of relevance or any other
27 ground other than the mere presence of Confidential Information. The existence of

1 this Order must not be used by either party as a basis for discovery that is otherwise
2 improper under the Federal Rules of Civil Procedure.

3 24. If a Party is served with a subpoena or a court order issued in other
4 litigation that compels disclosure of any information or items designated in this
5 action as "CONFIDENTIAL" or "CONFIDENTIAL – OUTSIDE COUNSEL
6 ONLY", that Party must:

7 (a) promptly notify in writing the designating party. Such
8 notification shall include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or
10 order to issue in the other litigation that some or all of the material covered by the
11 subpoena or order is subject to this Protective Order. Such notification shall
12 include a copy of this Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures to protect the
14 information designated "CONFIDENTIAL" or "CONFIDENTIAL – OUTSIDE
15 COUNSEL ONLY" sought to be pursued by the designating party whose Protected
16 Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with
18 the subpoena or court order shall not produce any information designated in this
19 action as "CONFIDENTIAL" or "CONFIDENTIAL – OUTSIDE COUNSEL
20 ONLY", before a determination by the court from which the subpoena or order
21 issued, unless the party has obtained the designating party's permission. The
22 designating party shall bear the burden and expense of seeking protection in that
23 court of its confidential material – and nothing in these provisions should be
24 construed as authorizing or encouraging a receiving party in this action to disobey a
25 lawful directive from another court.

1 25. Non-Party Production.

2 (a) The terms of this Order are applicable to information produced
3 by a non-party in this action and designated as “CONFIDENTIAL” or
4 “CONFIDENTIAL – OUTSIDE COUNSEL ONLY.” Such information produced
5 by non-parties in connection with this litigation is protected by the remedies and
6 relief provided by this Order. Nothing in these provisions should be construed as
7 prohibiting a non-party from seeking additional protections.

8 (b) In the event that a party is required, by a valid discovery request,
9 to produce a non-party’s confidential information in its possession, and the party is
10 subject to an agreement with the non-party not to produce the non-party’s
11 confidential information, then the party shall:

12 (1) promptly notify in writing the requesting party and the
13 non-party that some or all of the information requested is subject to a
14 confidentiality agreement with a non-party;

15 (2) promptly provide the non-party with a copy of the
16 Stipulated Protective Order in this litigation, the relevant discovery
17 request(s), and a reasonably specific description of the information requested;

18 (3) make the information requested available for inspection
19 by the non-party; and

20 (4) inquire whether the non-party will consent or object to the
21 disclosure of such non-party’s confidential information.

22 26. Final Disposition. Unless otherwise agreed by the parties in writing,
23 within sixty (60) days after the Final Disposition of this action, as defined below,
24 each receiving party authorized by this Order must return all Confidential
25 Information to the producing party or destroy such Confidential Information.
26 Whether the Confidential Information is returned or destroyed, Counsel for the
27 receiving party must submit a written certification to Counsel for the producing

1 party (and, if not the same person or entity, to the designating party) by the 60-day
2 deadline that (1) identifies (by category, where appropriate) all of the Confidential
3 Information that was returned or destroyed and (2) affirms that the receiving party
4 has not retained any of the Confidential Information. Notwithstanding this
5 provision, and unless otherwise agreed by the parties in writing, Counsel are
6 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition
7 and hearing transcripts, legal memoranda, correspondence, deposition and trial
8 exhibits, expert reports, attorney work product, and consultant and expert work
9 product, even if such Materials contain Confidential Information. Any such
10 archival copies that contain or constitute Confidential Information remain subject to
11 this Order as set forth herein. Even after Final Disposition of this litigation, the
12 confidentiality obligations imposed by this Order will remain in effect until a
13 designating party agrees otherwise in writing or a Court otherwise directs. "Final
14 Disposition" means the later of (1) dismissal of all claims and defenses in this
15 action, with or without prejudice, and (2) final judgment in this action after the
16 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
17 this action, including the time limits for filing any motions or applications for
18 extension of time pursuant to applicable law.

19 27. Also within sixty (60) days after the Final Disposition of this action,
20 Counsel for each producing party must file an ex parte motion for an order
21 requesting that the Court either destroy the Confidential Information on file or
22 authorizing the return of all Confidential Information produced by that party.

23 28. The restrictions and obligations set forth within this Order will not
24 apply to any Confidential Information that: (a) the parties mutually agree should
25 not be subject to this Order; (b) the parties mutually agree, or the Court rules, is
26 already public knowledge; (c) the parties mutually agree, or the Court rules, has
27 become public knowledge other than as a result of disclosure by the receiving party,

1 its employees, or its agents in violation of this Order; or (d) has come or will come
2 into the receiving party's legitimate knowledge independently of the production by
3 the designating party. Prior knowledge must be established by pre-production
4 documentation.

5 29. The restrictions and obligations within this Order will not be deemed
6 to prohibit discussions of any Confidential Information with anyone if that person
7 already has or obtains legitimate possession of that information.

8 30. Transmission by facsimile or email is acceptable for all notification
9 purposes within this Order.

10 31. This Order may be modified by written agreement of the parties,
11 subject to approval by the Court.

12 32. This Order does not and is not intended to change, amend, or
13 circumvent any rule of this Court or any Local Rule.

14 33. The Court may modify the terms and conditions of this Order for good
15 cause, or in the interest of justice, or on its own order at any time in these
16 proceedings. The parties prefer that the Court provide them with notice of the
17 Court's intent to modify the Order and the content of those modifications prior to
18 entry of such an order.

19 34. Even after the termination of this action, the confidentiality and other
20 obligations imposed by this Order will remain in effect until the producing party
21 agrees otherwise in writing or the Court otherwise directs. Any Final Disposition
22 of this action as to any or all parties will include a specific provision that the Court
23 will retain jurisdiction to enforce the terms of this Order for a period of two (2)
24 years following such Final Disposition unless otherwise ordered by the Court. The
25 parties, Counsel, and any individual who receives any Confidential Information
26 authorized by this Order consents to the personal jurisdiction of the Court for that
27 purpose.

1 IT IS SO ORDERED this 7th day of May, 2014.

2
3 

4 Magistrate Judge William V. Gallo
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TERRANCE ALLAN VANN, an
Individual, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

v.

MASSAGE ENVY FRANCHISING,
LLC, an Arizona Limited Liability
Corporation; CHARIS GROUP,
LLC, an Arizona Limited Liability
Corporation;
OC ENVY GROUP, INC., a
California Corporation; and
DOES 1-100, Inclusive,

Defendants.

CASE NO. 13CV2221 BEN (WVG)

CLASS ACTION

**AGREEMENT TO ABIDE BY
PROTECTIVE ORDER**

I, _____, declare and say that:

1. I am employed as _____
by _____.

2. I have received and read a copy of the Protective Order entered in
Vann v. Massage Envy Franchising, LLC, Case No. 13CV2221 BEN (WVG), and
understand and agree to abide by its terms.

3. I agree to keep confidential all Confidential Information provided to
me in this matter in accordance with the restrictions in the Protective Order.

1 4. I acknowledge that, by signing this agreement, I am subjecting myself
2 to the jurisdiction of the United States District Court for the Southern District of
3 California with respect to enforcement of the Protective Order.

4 5. I understand that any disclosure or use of Confidential Information in
5 any manner contrary to the provisions of the Protective Order may subject me to
6 sanctions for contempt of court.

7 6. I declare under penalty of perjury that the foregoing is true and correct.

8
9 Dated: _____

10
11 _____
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27